

PROBATE COURT PROCEDURE BULLETIN 26

RELATIVE TO: Contempt and Accompanying Arrest and Bail Issues

This procedure bulletin is prepared for Probate Court staff use in processing case files. It is not intended to provide parties with legal advice. This document should NOT be relied upon by parties and/or their attorneys to assist with the preparation/prosecution of any claims or other matters falling under the jurisdiction of the Probate Court.

Background

The Court's contempt powers are among the most significant powers bestowed upon a judge in his or her role in the administration of justice. These powers are NOT bestowed upon any other Court personnel including Registers. Complicating matters further, in terms of Court staff processing of contempt Orders and the like, is the fact that contempt can arise in a variety of ways and under a variety of circumstances. With this in mind, the following procedure was developed as a GENERAL GUIDELINE for Court staff to follow when/if a civil contempt issue arises. This Procedure Bulletin does not contain any information on criminal contempt as this is a RARE occurrence. **Please refer to the materials from the Judges and Register's Meeting of March 11, 2004 for more information on both civil and criminal contempt.**

As a preliminary matter, there are two types of contempt: civil contempt (by far the more common type of contempt) and criminal contempt. Civil contempt is remedial in nature. That is, the aim of a finding of civil contempt is to coerce compliance with a valid court order for the benefit of the complainant. A finding of criminal contempt must be prosecuted as a crime. It seeks to vindicate the dignity of the court.

Finally, please note that throughout this procedure bulletin, bench warrants are referenced. For all practical purposes there is no difference between a bench warrant and a capias. The more appropriate mechanism however for the Probate Court is the bench warrant.

General Procedure for Processing Civil Contempt

NOTE: Before any process for civil contempt is initiated, staff should ensure that notice of the alleged contemptuous behavior was delivered to the targeted party (e.g. return receipt received as signed, unclaimed or refused).

When a party is found in civil contempt, the following usually occurs:

1. First, a citation, show cause order or other order of the court (the notice) compelling compliance of some sort is issued by the Court. **Note:** citations and orders to show cause are currently produced through Sustain. The notice should specify:
 - a. Full legal name of party who is the target of the order;

- b. Correct address;
 - c. Exactly what that party has done and/or failed to do (note: this need not be a lengthy paragraph, just a sufficient notice of what the party is expected to be prepared to explain when he or she comes into court);
 - d. A warning of possible sanctions for an unexcused failure to comply; and,
 - e. When and where hearing will be held.
- 2. When this occurs, send notice of the Order to the targeted party via certified mail, return receipt requested with restricted delivery **AND** via regular mail. Send to all other parties of record via regular mail.
- 3. If the targeted party shows for hearing:
 - a. Conduct hearing on the record.
 - b. Either the Judge accepts the offer or not. If the Judge accepts the offer of proof, no finding will be made but a firm deadline will be established for compliance. If the Judge does NOT accept their offer, it may find them in contempt.
- 4. If the targeted party does NOT Show OR Does NOT Comply:
 - a. The Judge may issue a warning (e.g. warning that Bench Warrant will issue, removal will occur and/or a fine may be imposed).

NOTE: Oftentimes, payment of money to another party, their attorney or into some account, is what the Judge is seeking from the targeted party. This money should NEVER be referred to as bail as this implies a criminal sanction. It is often useful to simply refer to this money as a bond.

- b. Either the party complies or not.
 - c. If he or she complies, then no more action is required.
 - d. If he or she does NOT comply, then sanction warned of (see step 1.d.) can issue from the Judge as indicated in the warning.
 - e. If it is a Bench Warrant that the Court is dealing with: NOTE: that the Sheriff's office is required to serve any legal process directed of them by the Probate Judge. See RSA 547:29. ALSO CONSIDER THE FOLLOWING DISCUSSION:

Other Procedural Considerations

Oftentimes the sheriff's office is busy and the party is not arrested on the Bench Warrant for some period of time. For that reason, it is suggested that a cover letter and bench warrant be reviewed at least every 6 months. If the party has not been arrested and brought before the Judge by that time, a follow-up letter should be issued. DO NOT however, put an expiration date on the bench warrant itself.

If the party is arrested when the Court is closed, the question arises as to what the sheriff is supposed to do with him or her. It is important for each Probate Register and/or Judge reach an agreement with each county Sheriff's office on this issue (e.g. release or hold, whether to collect bond monies ordered, when to appear, etc.) A **written** procedural protocol between each probate court and each sheriff's office should be established.

For example, in some counties, an arrangement has been made whereby the sheriff collects the amount stated in the bench warrant and has the party complete an acknowledgement and receipt portion of an order requiring them to appear before the Judge of probate on a given date/time. After that, the party is released with a photocopy of that order/acknowledgement and receipt.

The Court and the sheriff's office should have agreed in advance of a day of the week and time of the day that the Court will take up these hearings.

The next day that the Court is open, the sheriff brings the money collected and the original of that order to the Court.

If the Court is open, rather than take the arrestee to the jail, the sheriff simply brings them to the Court. If the Judge cannot deal with the matter at that time, the Register may collect the bond monies ordered and have the person complete the acknowledgement and receipt portion of the order form.

If the party complies with the Warning AFTER the Bench Warrant has issued, the Court should *IMMEDIATELY* rescind the bench warrant (the same day of such compliance). The DMV should also be notified if the bench warrant has been rescinded.

Effective Date: September 1, 2006

Approved by John R. Maher
Administrative Judge of Probate Court